

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

CIVIL APPEAL No. HBA 02 of 2013

BETWEEN : WESTERN WRECKERS LTD, a limited liability
company incorporated under the Companies Act in
Fiji with its head office in Samabula, Suva and office
elsewhere in Fiji.

APPELLANT

AND : JOPE KOROI of Wailotua Village, Wainibuka,
Tailevu Farmer.

RESPONDENT

COUNSEL : MR. G. O'Driscoll for Appellant.

Respondent is absent and unrepresented.

Date of Hearing : 21st March, 2016.

Date of Ruling : 26th April, 2016.

JUDGMENT

[1] The respondent filed this action in the Magistrate's Court claiming \$38,240.00 as damages.

- [2] The respondent on 26th June 2006 traded-in his vehicle bearing No. CJ 051 with a credit note of \$4000.00 for the vehicle bearing No. FC 216 with the appellant. When the vehicles were exchanged the respondent paid another \$4000.00 to the appellant.
- [3] It is the position of the respondent that after two months the vehicle broke down and it was handed over to the appellant for repairs but they did not repair it. The respondent claimed damages for the loss of income from the vehicle and also refund of \$8000.00 paid to the appellant.
- [4] The learned Magistrate ordered the appellant to pay the respondent \$5000.00 as the cost incurred by the respondent for the repair of the vehicle and also to refund the deposit of \$8000.00 made by the respondent. The learned Magistrate did not award damages for loss of revenue
- [5] Being aggrieved by the award of the learned Magistrate and her findings the appellant preferred this appeal.
- [6] It is settled law that the court is empowered only to grant reliefs prayed for and proved by the parties. The learned Magistrate in her judgment has made the following observations in awarding \$5000.00 as costs of repairs;
- Since the plaintiff had not led evidence in this regard, but the defendant had, I award another \$5000/- to the plaintiff for the costs incurred by the plaintiff initially to repair the vehicle.
- [7] I have carefully examined the evidence on record but I am unable to find any evidence to the effect that that the respondent incurred expenses to repair the vehicle. Even if there is evidence the court had no power to grant any relief that had not been prayed for by the respondent. Therefore, the learned Magistrate has erred in awarding \$5000.00 to the respondent.
- [8] The respondent had on 26th June 2006 given a credit note to the appellant for \$4000.00 and had also paid \$4000.00 in cash on the same day. The plaintiff sought the refund of this \$8000.00 on the basis that the vehicle purchased was not roadworthy. On the evidence it appears that the respondent has purchased this vehicle from the appellant on a hire purchase agreement. The respondent admitted his signature on the Credit Approval Form according to which the total value of the vehicle was \$23000.00 and after deducting the amount paid in cash and also the value of the credit note he was liable to

pay \$15,000.00 in 24 monthly instalments at the rate of \$626.00 per month. The respondent admitted that he did not pay a single instalment and the appellant ceased the vehicle and sold it to a third party.

[9] The respondent had entered into a hire purchase agreement but in evidence he denied having signed it. The witness for the appellant, Jithendra Singh who prepared and signed this agreement on behalf of the appellant company testified that the respondent signed the agreement and when he was suggested by the learned counsel for the respondent that the respondent did not signed he reiterated that the respondent signed it in his presence. It is pertinent to note that there is a signature similar to that of the respondent on the agreement. It should either be his signature or someone else must forge his signature. There is no allegation of forgery by the respondent. It cannot be believed that the appellant gave a vehicle to the respondent without any agreement in writing containing its terms and conditions.

[10] In terms of the agreement the respondent was bound to examine the condition of the vehicle before purchasing it.

[11] Clause 2 of the Hire Purchase Agreement states as follows;

2. I/We warrant that:-

- a) before signing this instrument I/We examined the goods and am/are satisfied as to their condition and their suitability for my/our purposes;
- b) I/We relied solely on my/our own skill and judgment in selecting the goods;

[12] It appears from the above clause that the respondent had been offered sufficient opportunity to examine the condition of the vehicle before entering into the hire purchase agreement and also that he had purchased this vehicle at his own risk. The respondent therefore, cannot now be heard to complain that the vehicle was not in good condition.

[13] The appellant has repossessed the vehicle and sold it to a third party since the respondent failed to pay a single instalment as agreed. As per the terms of the agreement the appellant is entitled to resort to such a course when the hirer acts in contravention of the terms of the agreement.

[14] The learned Magistrate ordered the repayment of \$8000 on the ground of unjust enrichment. It is common ground that the respondent paid the appellant \$8000 and that the appellant was benefitted by it. The question is whether the plaintiff has been able to show the court that it was inequitable or unconscionable for the appellant to enjoy that money.

[15] As I have already stated the amount paid in advance by the respondent has been given credit to by the appellant in calculating the monthly instalment. If I may repeat, the value of the vehicle was \$23,000 and as per the documents the total outstanding amount at the time the agreement was entered into was \$15000. It was the respondent who violated the terms of the contract by not paying the instalments as agreed. Therefore, the question of unjust enrichment does not arise in this case.

[16] For the reasons aforementioned I make the following orders.

ORDERS.

1. The appeal of the appellant is allowed.
2. The judgment of the learned Magistrate is set aside.
3. The action of the respondent is dismissed.
4. The respondent shall pay the appellant \$1000 as costs (summarily assessed) costs of this appeal.



Lyone Seneviratne

JUDGE

26th April, 2016